

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA NOV - 8 2017

CLERK U.S. DISTRICT COURT
WEST. DIST. OF PENNSYLVANIA

UNITED STATES OF AMERICA)

v.)

Criminal No. 17-312)

ALASTAIR LEE STEWART)

INDICTMENT MEMORANDUM

AND NOW comes the United States of America, by its attorneys, Soo C. Song, Acting United States Attorney for the Western District of Pennsylvania, and Jessica Lieber Smolar, Assistant United States Attorney for said District, and submits this Indictment Memorandum to the Court:

I. THE INDICTMENT

A Federal Grand Jury returned a five-count Indictment against the above-named defendant for alleged violations of federal law:

<u>COUNT</u>	<u>OFFENSE/DATE</u>	<u>TITLE/SECTION</u>
1	Coercion and Enticement of a Minor to Engage in Illegal Sexual Activity November 15, 2016 to March 26, 2017	18 U.S.C. § 2422(b)
2	Travel with Intent to Engage in Illicit Sexual Conduct March 15, 2017 to March 26, 2017	18 U.S.C. §§ 2423(b) and (e)
3-4	Receipt of Material Depicting the Sexual Exploitation of a Minor March 5, 2017 (Count 3) March 22, 2017 (Count 4)	18 U.S.C. § 2252(a)(2)
5	Possession of Material Depicting the Sexual Exploitation of a Minor March 24, 2017	18 U.S.C. § 2252(a)(4)(B)

II. ELEMENTS OF THE OFFENSES

A. As to Count 1:

In order for the crime of Coercion and Enticement of a Minor to Engage in Illegal Sexual Activity, in violation of Title 18, United States Code, Section 2422(b), to be established, the United States must prove all of the following elements beyond a reasonable doubt:

1. That the defendant used the mail or any facility or means of interstate or foreign commerce; and
2. That the defendant knowingly persuaded, induced, enticed, or coerced any individual who had not attained the age of 18 years to engage in any sexual activity for which any person can be charged with a criminal offense, or attempted to do so.

Title 18, United States Code, Section 2422(b).

B. As to Count Two:

In order for the crime of Travel with Intent to Engage in Illicit Sexual Conduct, in violation of 18 U.S.C. §§ 2423(b) and (e), to be established, the government must prove all of the following essential elements beyond a reasonable doubt:

1. That the defendant traveled in interstate or foreign commerce, or attempted to do so;
2. That the defendant traveled for the purpose of engaging in illicit sexual conduct;
3. That the illicit sexual conduct would be in violation of chapter 109A if the sexual act occurred in the special maritime or territorial jurisdiction of the United States or any commercial sex act as defined in section 1591 with a person under 18 years of age.

Title 18, United States Code §2423(b), (e); United States v. Hayward; 359 F.3d 631 (3d Cir. 2004); United States v. Vang, 128 F.3d 1065 (7th Cir. 1997).

C. As to Counts Three and Four:

In order for the crime of Receipt of Material Depicting the Sexual Exploitation of a Minor, in violation of Title 18, United States Code, Section 2252(a)(2), to be established, the government must prove all of the following essential elements beyond a reasonable doubt:

1. That the defendant knowingly received a visual depiction of a minor in interstate or foreign commerce or using an instrument of interstate commerce, by any means including by computer, or through the United States mail.

Title 18, United States Code, Section 2252(a)(2); United States v. X-Citement Video, 115 S.Ct. 464 (1994); United States v. Gallardo, 915 F.2d 149 (5th Cir. 1990).

2. That the production of such visual depiction involved the use of a minor engaging in sexually explicit conduct, as those terms are defined in Title 18, United States Code, Section 2256, and the defendant knew the visual depiction was of a minor.

Title 18, United States Code, Section 2252(a)(2); United States v. McCormick, 675 F.Supp. 223 (M.D. Pa. 1987), United States v. X-Citement Video, 115 S.Ct. 464 (1994).

3. That the visual depiction is of such conduct.

Title 18, United States Code, Section 2252(a)(2).

D. As to Count Five:

In order for the crime of Possession of Material Depicting the Sexual Exploitation of a Minor, in violation of Title 18, United States Code, Section 2252(a)(4)(B), to be established, the government must prove all of the following essential elements beyond a reasonable doubt:

1. That the defendant knowingly possessed one or more items which contained a visual depiction of a minor engaging in sexually explicit conduct.

Title 18, United States Code, Section 2252(a)(4)(B).

2. That the item which contained the visual depiction had been mailed, transported or shipped in interstate commerce, or had been produced using materials which had been mailed or transported or shipped in interstate commerce.

Title 18, United States Code, Section 2252(a)(4)(B).

3. That the production of the visual depiction involved the use of a minor engaging in sexually explicit conduct, as those terms are defined in Title 18, United States Code, Section 2256.

Title 18, United States Code, Section 2252(a)(4)(B).

III. PENALTIES

A. As to Count 1: Coercion and Enticement of a Minor to Engage in Illegal Sexual Activity (18 U.S.C. § 2422(b)):

1. Imprisonment of not less than ten (10) years and up to life, 18 U.S.C. § 2422(b);
2. A fine of not more than \$250,000.00, 18 U.S.C. § 3571(b)(3);
3. A term of supervised release of not less than five (5) years and up to life, 18 U.S.C. § 3583(k); and
4. Any or all of the above.

B. As to Count 2: Travel With Intent to Engage in Illicit Sexual Conduct (18 U.S.C. §§2423(b) and (e)):

1. Imprisonment of not more than thirty (30) years, 18 U.S.C. §2423(b);
2. A fine of not more than \$250,000.00, 18 U.S.C. §3571(b)(3);
3. A term of supervised release of up to life, 18 U.S.C. §3583(k);
4. Any or all of the above.

C. As to Counts Three and Four: Receipt of Material Depicting the Sexual Exploitation of a Minor (18 U.S.C. § 2252(a)(2)):

1. Imprisonment of not less than five (5) years and not more than twenty (20) years, but if the defendant has a prior conviction under Title 18, United States Code, Chapter 110, Chapter 71, Chapter 109A, Chapter 117 or under Section 920 of Title 10, or under the laws of any state relating to aggravated sexual abuse, sexual abuse, or abusive sexual conduct involving a minor or ward, or the production, possession, receipt, mailing, sale, distribution, shipment, or transportation of child pornography, such person shall be fined under this title and imprisoned not less than 15 years nor more than 40 years;

2. A fine of \$250,000.00, 18 U.S.C. § 3571(b)(3);
3. A term of supervised release of at least 5 years, up to life, 18 U.S.C. § 3583(k);
4. Any or all of the above.

D. As to Count Five: Possession of Material Depicting the Sexual Exploitation of a Minor (18 U.S.C. § 2252(a)(4)(B)):

1. Imprisonment of not more than ten (10) years, but if any image of child pornography involved in the offense involved a prepubescent minor or a minor who had not attained 12 years of age, the defendant shall be fined under this title and imprisoned for not more than 20 years, or if the defendant has a prior conviction (Title 18, United States Code, Chapter 110, Chapter 71, Chapter 109A, Chapter 117 or under Section 920 of Title 10) or under the laws of any state relating to aggravated sexual abuse, sexual abuse, or abusive sexual conduct involving a minor or ward, or the production, possession, receipt, mailing, sale, distribution, shipment, or transportation of child pornography, such person shall be fined under this title and imprisoned not less than 10 years nor more than 20 years.

2. A fine of \$250,000.00 (18 U.S.C. § 3571(b)(3)).

3. A term of supervised release of at least 5 years, up to life (18 U.S.C. § 3583(k)).

4. Any or all of the above.

IV. MANDATORY SPECIAL ASSESSMENT

A mandatory special assessment of \$100.00 must be imposed at each count upon which the defendant is convicted, pursuant to 18 U.S.C. § 3013.

With respect to Counts One, Two, Three, Four and Five of the Indictment, an additional special assessment of \$5,000.00 must be imposed as the offenses were committed after

May 29, 2015 and the offenses are located within Chapter 110 and 117 of Title 18, United States Code. 18 U.S.C. § 3014(a).

V. RESTITUTION

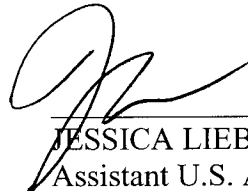
Restitution may be ordered in this case, together with any authorized penalty, as part of the defendant's sentence pursuant to 18 U.S.C. §§ 3663, 3663A and 2259.

VI. FORFEITURE

As set forth in the Indictment, forfeiture may be applicable in this case.

Respectfully submitted,

SOO C. SONG
Acting United States Attorney



JESSICA LIEBER SMOLAR
Assistant U.S. Attorney
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